



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT APPLICATION

5 Applicant(s): Bauer et al.
Case: 9-1
Serial No.: 09/783,191
Filing Date: February 14, 2001
Group: 2642
10 Examiner: William J. Deane, Jr.

I hereby certify that this paper is being deposited on this date with the U.S. Postal Service as first class mail addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Signature: [Signature] Date: April 20, 2004

#9
SMC
5/25/04

Title: Method and Apparatus for Dynamically Allocating Bandwidth Utilization in a Packet Telephony System

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SUPPLEMENTAL APPEAL BRIEF

Mail Stop Appeal Brief – Patents
Commissioner for Patents
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Appellants hereby reply to the non-final Office Action, mailed January 20, 2004. A request to reinstate the appeal is submitted herewith. Appellants' Appeal Brief in an Appeal of the final rejection of claims 1 through 41 in the above-identified patent application was submitted on October 16, 2003.

REAL PARTY IN INTEREST

A statement identifying the real party in interest is contained in Appellants' Appeal

30 Brief.

RELATED APPEALS AND INTERFERENCES

A statement identifying related appeals and interferences is contained in Appellants' Appeal Brief.

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STATUS OF CLAIMS

Claims 1 through 41 are pending in the above-identified patent application. A statement identifying the original status of the claims is contained in Appellants' Appeal Brief. Claims 1-34 are now rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1, 8, 10, 17-19, and 27 are also rejected under 35 U.S.C. §102(b) as being anticipated by Sharma et al. (U.S. Patent No. 5,546,395), claims 2-7, 9, 11-16, 20-26, 28-37, and 40-41 are rejected under 35 U.S.C. §103(a) as being unpatentable over Sharma et al. in view of Javitt (U.S. Patent No. 5,926,483), and claims 38 and 39 are rejected under 35 U.S.C. §103(a) as being unpatentable over Sharma et al. and Javitt in view of Weser et al. (U.S. Patent No. 6,104,803).

STATUS OF AMENDMENTS

A statement identifying the status of the amendments is contained in Appellants' Appeal Brief.

SUMMARY OF INVENTION

A Summary of the Invention is contained in Appellants' Appeal Brief.

ISSUES PRESENTED FOR REVIEW

A statement identifying the issues originally presented for review is contained in Appellants' Appeal Brief. In the present Office Action, the Examiner has withdrawn the previous rejections and added a new rejection of claims 1-34 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1, 8, 10, 17-19, and 27 are also rejected under 35 U.S.C. §102(b) as being anticipated by Sharma et al., claims 2-7, 9, 11-16, 20-26, 28-37, and 40-41 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Sharma et al. in view of Javitt, and claims 38 and 39 are rejected under 35 U.S.C. §103(a) as being unpatentable over Sharma et al. and Javitt in view of Weser et al.

GROUPING OF CLAIMS

A statement identifying the grouping of the claims is contained in Appellants' Appeal Brief.

CLAIMS APPEALED

A copy of the appealed claims is contained in an Appendix of Appellants' Appeal Brief.

ARGUMENT

Section 112 Rejections

Claims 1-34 were rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, the Examiner asserts that there is no proper antecedent basis for "said connections" in claim 1 (line 4), claim 10 (line 6), claim 19 (line 4), and claim 27 (line 6).

This rejection was first introduced in the current Office Action. Appellants believe that claims 1, 10, 19, and 27 have proper antecedent basis for the term "said connections," in compliance with Section 112 (e.g., "each of said applications..." communicating over "a connection"). Appellants are agreeable, however, to amend the claims in accordance with the Examiner's assertion upon resolution of the appeal of the rejections under 35 U.S.C. §102(b) and §103(a).

Independent Claims 1, 10, 19 and 27

The Examiner rejected independent claim 1, 10, 19, and 27 under 35 U.S.C. § 102(b) as being anticipated by Sharma et al.

Regarding independent Claim 1, the Examiner asserts that Sharma et al. teaches "the claimed method" (Abstract; col. 1, line 67, to col. 2, line 24) and multiple applications (col. 32, line 31, to col. 33, line 4).

Appellants note that Sharma is directed to a voice over data modem that simultaneously transmits voice and data to a remote site. The voice over data function dynamically allocates bandwidth depending on the "demands of the voice grade digitized signal and the modulation speed of the communication link between the two sites." Col. 1, line 65, to Col. 2, line 4. Sharma is limited to bandwidth allocation for a single communications connection, or link,

between two sites for a single application, namely, a voice compression algorithm. See, e.g., Abstract and Title (Dynamic Selection of Compression Rate for a Voice Compression Algorithm in a Voice Over Data Modem). Regarding the Examiner's note about "multiple applications," Sharma simply discloses that there are "other communication and control applications in which the supervisory packet may be used." (Col. 32, line 65, to col. 33, line 4.) Independent claims 1, 10, 19 and 27 emphasize that *the selection of an encoding scheme is based upon an encoding requirement of each application*.

Thus, Sharma does not disclose or suggest "selecting at least one encoding scheme for at least one of said connections during a call set-up phase based upon encoding requirements of said application associated with said at least one connection, each of said applications having a different encoding requirement," as required by independent claims 1, 10, 19, and 27.

Independent Claim 35

Independent claim 35 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Sharma et al. in view of Javitt. Claim 35 requires the step of "establishing said connection, wherein said connection has a plurality of call segments between said calling party and said application, each of said call segments having a different encoding requirement; and selecting an encoding scheme for each of said call segments based on said corresponding encoding requirement."

Sharma is limited to bandwidth allocation for a single communications connection, or link, between two sites for a single application, namely, a voice compression algorithm. See, e.g., Abstract and Title (Dynamic Selection of Compression Rate for a Voice Compression Algorithm in a Voice Over Data Modem). Javitt is directed to communication systems providing compression of voice and image communications. Neither Sharma nor Javitt disclose or suggest that each connection has a plurality of call segments each having a different encoding requirement; and that an encoding scheme is selected for each of the call segments based on the corresponding encoding requirement, as required by claim 35.

Additional Cited References

Javitt was cited by the Examiner for its disclosure of "multiple connections and the call segments or half circuits and the independently selecting aspect." As noted earlier, Javitt is directed to communication systems providing compression of voice and image communications. Javitt does not disclose or suggest selecting a different encoding scheme based on encoding

requirements of a plurality of applications or call segments, as required by each of the independent claims of the present application.

Weser et al. was cited by the Examiner for its disclosure that “TVRs are old in the art.”

Weser is directed to an intelligent service peripheral device that includes a service intelligent unit and a media processing unit (see, Summary of the Invention). Weser does not disclose or suggest selecting a different encoding scheme based on encoding requirements of a plurality of applications or call segments, as required by each of the independent claims of the present application.

Conclusion

The rejections of the claims under section §102 and §103 in view of Sharma et al., Javitt, and Weser et al., alone or in any combination, are therefore believed to be improper and should be withdrawn.

Dependent Claims

Claims 5/14/23/31 and 7/16/25/33 specify a number of limitations providing additional bases for patentability. Specifically, the Examiner rejected claims 5, 7, 14, 16, 23, 25, 31, and 33 under 35 U.S.C. § 103(a) as being unpatentable over Sharma et al. in view of Javitt. Claims 5/14/23/31 require that said one or more conditions include a predefined network error characteristic and an encoding scheme is selected that performs well under the observed network error characteristic. Claims 7/16/25/33 require an encoding scheme (that) is independently selected for each half-circuit associated with said at least one of connections.

Regarding claims 5, 14, and 23, the Examiner asserts that it would have been obvious to one of ordinary skill in the art to select an encoding scheme that performs well under the network conditions. Appellants maintain, however, that encoding schemes are typically selected based on the available bandwidth. Although encoding schemes are sometimes selected based on their performance for accommodating the error levels of a particular type of communication network, the selection is typically done in a static fashion, i.e., it does not change as network conditions change. Thus, it is not typical to dynamically select an encoding scheme that performs well under observed network conditions, as required by claims 5, 14, 23, and 31.

Regarding claims 7, 16, 25 and 33, the Examiner asserts that Sharma teaches the “claimed device except for the multiple connections and the call segments or half circuits and the independently selecting aspect,” and asserts that Javitt teaches such at col. 3, lines 56-64, and col. 4, lines 57-61.

5 Claims 7/16/25/33 are directed to independently selecting an encoding scheme *for each half-circuit*. Although Javitt teaches that “a determination of which channel to compress could be made after consulting both the compressibility rating of the service area and the customer preferences” (col. 3, lines 61-64), Javitt does not disclose or suggest independently selecting an encoding scheme for each half-circuit.

10 Thus, Sharma et al., Javitt, and Weser et al., alone or in any combination, do not disclose or suggest independently selecting an encoding scheme for each half-circuit, as required by dependent claims 7, 16, 25, and 33.

The remaining rejected dependent claims are believed allowable for at least the reasons identified above with respect to the independent claims.

15 The attention of the Examiner and the Appeal Board to this matter is appreciated.

Respectfully submitted,



20 Date: April 20, 2004

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